



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Proposed Collection Revision, Comment Request: Final Rule for Records of Commodity Interest and Related Cash or Forward Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or the “Commission”) is announcing an opportunity for public comment on the proposed revision to the collection of certain information by the Commission. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information and to allow 60 days for public comment. The Commission recently adopted a final rule that amends the Commission Regulation dealing with records of commodity interest and related cash or forward transactions (the “Final Rule”). The Final Rule modifies some of the recordkeeping requirements that apply to certain participants in the markets regulated by the Commission. This notice solicits additional comments on the PRA implications of the amended recordkeeping requirements that are set forth in the Final Rule, including comments that address the burdens associated with the modified information collection requirements of the Final Rule.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by “OMB Control No. 3038-0090; Records of Commodity Interest and Related Cash or Forward Transactions Collection,” by any of the following methods:

- The Commission’s web site, via its Comments Online process at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the web site.

- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

- Hand Delivery/Courier: Same as Mail above.

- Federal eRulemaking Portal: <http://www.regulations.gov/>. Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Katherine Driscoll, Associate Chief Counsel, (202) 418-5544, kdriscoll@cftc.gov; August A. Imholtz III, Special Counsel, (202) 418-5140, aimholtz@cftc.gov; or Lauren Bennett, Special Counsel, (202) 418-5290, lbennett@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Final Rule amends Regulation 1.35(a). The collections of information related to Regulation 1.35(a) have been previously

reviewed and approved by OMB in accordance with the PRA¹ and assigned OMB Control Number 3038-0090. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed revision to the collection of information listed below.

Title: Adaption of Regulations to Incorporate Swaps - Records of Transactions (OMB Control No. 3038-0090). This is a request for an extension and revision of a currently approved information collection.

Abstract: The Commission amended Regulation 1.35(a) to: (1) exclude members of designated contract markets (“DCMs”) and members of swap execution facilities (“SEFs”) that are not registered or required to register with the Commission (“Unregistered Members”) from the requirement to keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions; (2) exclude Unregistered Members from the requirement to maintain records in a particular form and manner; (3) exclude Unregistered Members from the requirement to retain text messages; (4) exclude commodity trading advisors (“CTAs”) from the oral recordkeeping requirement; and (5) provide that all records required to be kept under the regulation must be kept in a form and manner which permits prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information; and clarify that all records, except records of oral and written communications leading to the execution of a transaction in a commodity interest and related cash or forward

¹ 44 U.S.C. 3501 et seq.

transactions, must be kept in a form and manner that allows for identification of a particular transaction.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed revision to the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed revision to the collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Regulation 145.9.²

² 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: In the Notice of Proposed Rulemaking, the Commission’s preliminary estimate stated that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the proposed amendments to Regulation 1.35(a).³ The Commission subsequently determined, however, that the amendments to Regulation 1.35(a) likely will reduce the current information collection burdens on affected market participants under OMB control number 3038-0090.

1. Exclusion of Unregistered Members from Requirement to Maintain Records of Pre-Trade Written Communications

Pursuant to the prior version of Regulation 1.35(a), which was published in 2012, Unregistered Members were required to keep written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions.⁴ The Final Rule states that Unregistered Members are not required to keep written communications that lead to the execution of a commodity interest transaction and related

³ See Records of Commodity Interest and Related Cash or Forward Transactions, 79 Fed. Reg. 68140, 68144 (Nov. 4, 2014).

⁴ See Adaptation of Regulations to Incorporate Swaps – Records of Transactions, 77 Fed. Reg. 75523 (Dec. 21, 2012) (the “2012 Rule”).

cash or forward transactions. Therefore, their compliance costs, and the associated information collection burden, with respect to this particular aspect of the rule will be eliminated. The Commission estimates that this change to Regulation 1.35(a) will decrease the information collection burden under the rule by approximately one-half hour per week per entity. The Commission estimates based on select market data that there are approximately 3,200 Unregistered Members that will have their recordkeeping obligations reduced as a result of this element of the Final Rule.

2. Exclusion of Unregistered Members from Requirement to Maintain Records in a Particular Form and Manner

Pursuant to the prior version of Regulation 1.35(a), which was published in 2012, Unregistered Members were required to comply with the form and manner requirements of the rule.⁵ The Final Rule states that Unregistered Members are not required to keep their required records in a prescribed form and manner. Therefore, their compliance costs, and the associated information collection burden, with respect to this particular aspect of the rule will be eliminated. The Commission estimates that this change to Regulation 1.35(a) will decrease the information collection burden under the rule by approximately one-half hour per month per entity. The Commission estimates based on select market data that there are approximately 3,200 Unregistered Members that will have their recordkeeping obligations reduced as a result of this element of the Final Rule.

3. Exclusion of Unregistered Members from Requirement to Retain Text Messages

The records that must be kept under Regulation 1.35 include text messages, as well as other forms of electronic records. The Final Rule amends Regulation 1.35(a) to

⁵ Id.

provide that Unregistered Members are not required to maintain records of text messages.⁶ The Final Rule defines “text messages” as written communications sent from one telephone number to one or more telephone numbers by short message service (“SMS”) or multimedia messaging service (“MMS”). It can be difficult or cumbersome to transfer SMS and MMS messages to computers, storage devices, or storage media, and to maintain and access the messages on an ongoing basis. Therefore, the Commission believes that eliminating this requirement for Unregistered Members will reduce their recordkeeping burden by eliminating the time required to periodically transfer these messages to computers, storage devices, or storage media, as well as the time required to periodically confirm the transfer and retention of the messages. The Commission estimates that Unregistered Members would spend approximately one-half hour per month preserving and maintaining text messages in the manner described above. The Commission estimates based upon select market data that there are approximately 3,200 Unregistered Members that will have their recordkeeping obligations reduced as a result of this element of the Final Rule.

4. Exclusion of CTAs from Requirement to Record Oral Communications

Pursuant to the Final Rule, CTAs will no longer be required to record oral communications.⁷ In the 2012 Rule, the Commission added the requirement that certain types of firms, including CTAs that are members of a DCM or of a SEF, record all oral communications that lead to the execution of a transaction. Under the Final Rule, CTAs that are members of a DCM or of a SEF no longer have to comply with this requirement,

⁶ Although the 2012 Rule required Unregistered Members to keep text messages, Commission staff granted Unregistered Members no-action relief from this requirement in May 2014 (see CFTC Staff Letter No. 14-72).

⁷ Pursuant to CFTC Staff Letter Nos. 14-60, 14-147 and 15-65, Commission staff granted no-action relief to CTAs from the requirement to record oral communications.

and they therefore no longer have to administer a recording program and maintain a recording infrastructure. The Commission estimates that these CTAs would spend approximately one-half hour per week administering a recording program and maintaining recording infrastructure. The Commission estimates that there are approximately 1,175 CTAs that will have their recordkeeping obligations reduced as a result of this element of the Final Rule.⁸

5. Form and Manner Requirements, in General

Pursuant to the Final Rule, all records required to be kept under Regulation 1.35(a) must be kept in a form and manner which permit prompt, accurate and reliable location, access, and retrieval of any particular record, data, or information. In addition, the Final Rule also states that all records, except records of oral and written communications leading to the execution of a transaction in a commodity interest and related cash or forward transactions, must be kept in a form and manner that allows for identification of a particular transaction. These new requirements replace the former requirement in the previous version of the rule that required records be “identifiable and searchable by transaction.” The Commission views these revised form and manner requirements as a clarification of the prior requirements. Accordingly, the revised form and manner requirements do not increase or decrease the information collection burden for market participants that are subject to Regulation 1.35(a).

The Commission estimates the burden of this collection of information as follows:

Respondents/Affected Entities: Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, and Members of a DCM or of a SEF.

⁸ As of November 2015, there were approximately 2,350 CTAs registered with the Commission. For the purposes of this analysis, the Commission is conservatively estimating that half of registered CTAs are members of a DCM or of a SEF.

Estimated number of respondents: 6,000.

Estimated total annual burden on respondents: 319,707 hours.

Frequency of collection: Ongoing.

(Authority: 44 U.S.C. 3501 et seq.)

Dated: December 18, 2015

Christopher J. Kirkpatrick,

Secretary of the Commission.

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